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Supreme Court, U.S.
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No. 92-381

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

STEWART KING and
ANNE KING, - - - - - - - - Petitioners

versus

W. R. KING, - - - - - - - - Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE KENTUCKY SUPREME COURT, AND APPENDIX

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May it please the Court:

COUNTERSTATEMENT OF THE CASE

Summary of Facts

Respondent accepts the statement of facts by the Kentucky Supreme Court. The petition claims no error based upon these uncontested facts.

For sixteen of her first eighteen months of life Jessica King spent time in her grandfather's house at least every other day and often daily. She ate, slept, and received care and nurture from him and his fiancee—now his wife—with the approval and gratitude of her parents, who moved into a new house he built for them on his farm shortly after she was born.

A dispute over the amount of work performed on the farm by Stewart King for his participation in the crop

proceeds and use of the house led to departure of Jessica and her parents to live elsewhere. Her grandfather's oral request and his counsel's written request for visitation with Jessica were refused, and he brought suit for visitation.

After a two-session evidentiary hearing and comprehensive evaluation of all parties by a court-appointed psychologist, the circuit court found visitation with her grandfather was in Jessica's best interests and granted it. Jessica's parents objected to visitation as an invasion of their rights but presented no history or prospect of danger to her. They said he might turn her against them.

For over a year, while petitioners pursued an appeal, visitation took place as decreed, twice weekly, without any request made to the trial or appellate court to alter or end it. The Kentucky Supreme Court upheld the visitation decree and these findings of fact, and rejected others urged by petitioners or mentioned by two dissenters and the intermediate appellate court. *King* v. *King*, 828 S.W.2d 630 (Ky. 1992).

Respondent believes the proof raises no factual issues material to certiorari even upon full briefing. The facts are uncontroverted, and others now argued were not raised below. Mindful of the obligation imposed by Rule 15.1, however, this response will examine some of the topics in the petition although the task is distasteful.

Clarification or Distinction of Other Facts

Moral Influence

One dissenting opinion castigated the majority for failing to mention that respondent openly cohabited with a woman to whom he was not married. In oral argument counsel for the parents had informed the court that the

couple was married. Now, in the parents' petition, counsel pardonably new to the case argues this arrangement was a basis for their objection to visitation. [Petition, p.3]

In fact Jessica spent her early months receiving care in her grandfather's home and her parents never objected to the arrangement or the fiancee then or later. The lack of objection is not surprising as petitioner Stewart King, as a minor in the custody of the respondent, lived in the same home with the same persons where Jessica was kept and now visits. No whisper of improper care, influence, or moral example came out in petitioners' proof or arguments to the state courts. This non-issue appears unsupported as well as inappropriately novel upon review.

The appellate court's essential holding (828 S.W.2d @ 632) on the scope of differences between the parents and the grandfather is succinct and accurate:

> "There is no reason that a petty dispute between a father and son should be allowed to deprive a grandparent and grandchild of the unique relationship that ordinarily exists between those individuals. One of the main purposes of the statute is to prevent a family quarrel of little significance to disrupt a relationship which should be encouraged rather than destroyed."

Basis for Respondent's Views

Petitioners' recitation [Petition, p.3] that respondent "became upset when sickness . . . prevented Stewart from working" misses the mark, if it has any significance. The Kentucky Supreme Court accurately summarized the testimony (828 S.W.2d @ 630) that respondent "thought his son drank too much and did not do enough work," however no specific finding was made or requested on this subject and it appears beside the issue.

Proceedings and Activities Since Adjudication

Petitioners explain their plight following denial of rehearing by the Kentucky Supreme Court only in part. They omit description of at least ten occasions when respondent came to pick up Jessica, after petitioners had left town so as to deprive him, by design or coincidence, of at least two other scheduled visits. Respondent was met with performances staged and videotaped by her parents and maternal grandparents when he arrived to pick up the child.

They bought a video camera in order to film Jessica, now five years old, muttering repeatedly "I don't want to go, and that's final." One of them might read from the visitation decree and observe gratuitously how it doesn't provide she has to go against her will, or plead synthetically but publicly that surely her grandfather would not upset Jessica further by forcing her to accompany him.

They insist Jessica has forgotten her grandfather, but bring her for visitation with Jessica's paternal great grandparents, respondent's parents, who live in another new house he built for them next door to his, within two hundred feet and direct line of sight of each other, and a continuous yard. Jessica played there during visitation with respondent and with her great grandparents and has frequent and close contact with her maternal grandparents and paternal grandmother. Obviously petitioners do not intend to deny her intergenerational contact with anyone except the respondent.

Despairing of any outbreak of common sense or consideration for Jessica's interests, not to mention his own, respondent moved the circuit court to adjudge petitioners in contempt. A hearing was held on July 15, 1992.

The circuit court remained unimpressed with these dramatics and rejected the notion of Jessica having the decision to make or of her freely making the one she spoke. It ordered the parents to have Jessica delivered to petitioner's home for visitation but declined to martyrize them by using its contempt power, thus they are not 'threatened with contempt of court if they do not hand over the little girl.' (Petition, p. 4). [The trial judge gave a noteworthy illustration of restraint but implacable rejection of petitioners' tactics.] Jessica's maternal aunt volunteered to transport her, and the arrangement has worked since midsummer.

Since visitation resumed it has gone without a hitch. The close and loving relationship between Jessica and her grandfather has continued, without a suggestion of harm to her or her values in any form, and with a witness on the scene at the beginning of each visit in position to observe and report problems if any arose.

Characterization of the Visitation Ordered

Finally, the petition maintains from the first page to the last that the state trod upon the parents' sole prerogatives when it "ordered them to involuntarily surrender the child to the custody of a grandparent for periodic visitation." (Petition, p. i, Question Presented). They write "the state now compels them to disregard their little girl's pleas and protests, as well as their own good judgment as to the child's best interests." (Petition, p. 5). According to the parents, they "obviously cannot exercise the 'companionship, care, custody and management' of their little girl, . . . when the power of the state has placed the child under the custody and control of someone else." (Petition, p. 8). They complain they "are deprived of all input over the things

their child will do, the values and practices to which she will be exposed, and the way her needs will be addressed when she is with her grandfather." (Petition, pp. 8-9). They claim "the law which tears a small child away from her loving and fit natural parents and vests control of the child in persons the parents have deemed undesirable" is inadequately justified. (Petition, p. 9).

Respondent believes this court will have no trouble differentiating between a custody order and a visitation order for three hour periods, or observing in the temporary visitation order (Appendix to Petition, p. a25) that Jessica's grandfather "shall accommodate the child's normal medical, dietary, and rest regime," and from the final visitation order (Appendix to Petition, p. a27-a28) that when Jessica is in a vehicle during visitation she is to be in a car seat purchased by him and approved in advance by one of her parents.

The Kentucky Supreme Court wrote (828 S.W.2d @ 633):

> "Jessica's father testified that he had no qualms about his father's ability to love and care for the child. The condition and safety of Mr. King's home was never in issue as Jessica had been left there many times and there appeared to be no question that she would receive proper care during periods of visitation."

So these well meant but extensive exaggerations, unsupported by facts or rulings, have not been urged or accepted below. Specific instances of interference in parental control or complaints to the supervising trial court, by their absence, undermine these new arguments here.

REASONS WHY THE WRIT SHOULD BE DENIED

Summary

This case presents no substantial federal constitutional issue of novelty, interpretation, or resolution of conflicting decisions.

All states have adopted grandparent visitation statutes. State courts and legislatures are protecting liberty interests vouchsafed by the due process clause and recognized in this court's decisions. The family issue is peculiarly within the states' competence, and they are dealing with it. Despite widespread application of differing statutes, and ample interpretative state court decisions, no statute has been found unconstitutional.

The argument that the parental liberty right is exclusive has no support in precedents recognizing that right, as those also recognize the rights of others and weigh all the rights. The petition seeks certiorari for reinterpretation or repeal of precedents, followed by the states as written, so as to avoid either recognizing other interests or weighing them along with the conceded liberty rights of the petitioners. It appears certain that either petitioners' claim of exclusiveness or those precedents must fall.

This case has limited and undisputed facts, with no threat to the child from visitation, but arises under the broadest form of statute, enacted by a minority of states, which allows visitation by grandparents after a hearing and finding that visitation is in the best interests of the child. No impairment of the intact nuclear family is a condition to granting visitation, since this statute does not require it.

A decision thus would be definitive only as to these parties and to like narrow cases. Accepting this case would

start, not finish, exceptions to these circumstances and interpretations of other laws by the states, produce rather than remove uncertainty, and start a parade of later petitions to this court. Just as a decision to reverse or restudy the issues would likely promote rather than resolve conflict, a decision to affirm would add little or nothing to the body of law upon the subject of grandparent visitation, liberty rights, or procedural due process.

This case was properly decided upon the facts and the law, and fully considered as to all issues raised here. Nothing in it, especially the shallow ire of Jessica's parents, cries out for relief; no great or threatening wrong has been done even if error was made; if it had been made the state courts are open and able to correct it, unless done by the passage of time itself.

Accordingly certiorari should be denied.

A. The Sole Issue Raised for Review Has Been Decided Against Petitioners' Position and No Reason to Alter or Abolish Precedent Is Urged

These petitioners assert a constitutional issue whether state-ordered visitation after a due process hearing impermissibly intrudes into their rights as parents. Parental rights to control children are not absolute, as these petitioners claim. Even when this court has held a state law crossed the line into arbitrary action violative of due process, it has recognized and weighed other interests, some constitutionally protected and some not. Examination of principal authorities cited by petitioners shows as much.

Meyer v. *Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed.2d 1042 (1923), observed (p. 401) that in the case before it "the legislature has attempted materially to in-

terfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with power of parents to control the education of their own," and noted (p. 403): "It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals, or understanding of the ordinary child." This case affords no basis for the narrow argument made now. It recognizes the parental rights are fundamental and protected by due process, but it also recognizes rights of others and conducts a balancing test among those rights.

Nothing quoted or contained in the opinion excludes, from the field of knowledge for children, information as to their ancestors, including that obtained by direct observation and contact. Such knowledge may be more precious, and no less injurious, than a foreign language learned at an early age.

In *Pierce* v. *Society of Sisters of the Holy Names of Jesus and Mary,* 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed.2d 1070 (1925), the respondent schools asserted that others than the parents had rights to be protected; upon the basis of the liberty interest guaranteed by the Fourteenth Amendment, the court upheld injunctions in favor of the threatened schools, not parents. Petitioners' position finds no support in this case.

Prince v. *Massachusetts,* 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed.2d 645 (1944), one of the Jehovah's Witnesses cases, presented a parent's claim of a liberty right in bar to conviction under a child labor statute. Contrary to the petitioners' claim of the unrestricted right to regulate the upbringing of Jessica without interference or consideration

of interests outside their own as her parents, this precedent makes it clear that other interests must be considered, in at least these excerpts (pp. 165-167):

> "The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens.
>
> * * *
>
> "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for the obligations the state can neither supply nor hinder. *Pierce* v. *Society of Sisters, supra.* And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.
>
> "But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. [Citations omitted.]
>
> And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. [Footnotes omitted.] Its authority is not nullified merely because the par-

> ent grounds his claim to control the child's course of conduct on religion or conscience.***
>
> [T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and . . . this includes, to some extent, matters of conscience and religious conviction.
>
> * * *
>
> "The state's authority over children's activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers within a broad range of selection."

Later due process cases now cited recognize constitutional concern and protection for the interests of children and the state as well as parents, and do not stand for the proposition that the parents' due process liberty rights as to children are always paramount, much less exclusive: *Stanley* v. *Illinois,* 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); (the remedy of a hearing removes the due process objection, and by extension such hearing in this case does the same; interests of others than the father were recognized and considered); *Wisconsin* v. *Yoder,* 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (Interests of state, parents and children must be weighed and considered together in evaluating statute requiring school attendance of children; all participating justices of the court adopted this balancing analysis of separate interests vouchsafed by due process, not just religious freedom); *Santosky* v. *Kramer,* 455 U.S. 745, 102 S.Ct. 1982, 71 L.Ed.2d 599 (1982) (due process-protected interests of state as parens patriae and of children are involved with those of parents in proceedings for termination of parental rights;

majority and dissenting opinions both recognize need for consideration of at least two if not all three interests at one or the other of a bifurcated proceeding).

It appears from these cases that petitioners claim under and against the same precedents simultaneously. By asserting their parental rights as absolute, exercisable in spite or disregard of due process rights in others, petitioners here present only a decision whether to interpret these precedents in a manner contrary to the plain terms and tests they employ, or to uproot them altogether.

Since they do not argue such an interpretation or annihilation, but instead rely upon these very precedents, the petitioners here leave the court nothing to decide: such logic is strangled by its own umbilical cord.

B. These Uncontroverted Facts Provide No Basis for Broad Review of the Issue of Grandparent Visitation.

In this case the wide issue, whether state ordered grandparent visitation per se offends the liberty right of objecting parents, appears in the most restrictive facts and the broadest scope of statute.

The sole reason for denial of visitation is the aftermath of a spat between the parents and the grandparents. No circumstances pose a threat to Jessica by visitation. With the approval and initiative of her parents she has known her grandfather, his wife, and their home and nurture.

The facts are too perfect and confined; they would support only the claim of exclusive parental control analyzed above, and that is unworthy of review. They require no review of the standard of proof employed in making findings of fact or indeed any procedural aspect of the inquiries to date because most are admitted and the rest uncontroverted.

C. Kentucky's Broad Statute, a Minority Form Among the States, If Construed Here Would Not Reach the Majority Types of Restrictive Laws.

Kentucky's grandparent visitation statute, unlike many of the various other forms adopted by states, does not require proof of a flaw or breakup of the nuclear family, from death, divorce, or separation, as a condition of visitation. It does not require proof that denial of visitation would adversely affect the child, but bases visitation upon a finding that it is in the best interest of the child. Petitioners' principal argument to the Kentucky Supreme Court, based upon a series of articles [most of them cited in a dissenting opinion (828 S.W.2d @ 637)], was that the statute thus is too broad. This scope of the law should defeat certiorari.

A substantial majority of other states have enacted grandparent visitation laws with specific conditions precedent, such as death of a parent or divorce. [A table of state laws compiled by counsel for the petitioners and exhibited with their brief to the Kentucky Supreme Court is the Appendix to this brief.]

The flaw or threat to the nuclear family by divorce or death of either parent is missing here, thus a ruling either way in this action would not address statutory schemes in other states except in theory. And as the claimed issue is well settled, review would be stale and unnecessary. Kentucky plainly has followed this court's directions in all respects and afforded due process to all concerned, while joining the united jurisprudence of the states upon grandparent visitation laws.

D. This Case Was Properly Decided Under State and Federal Law.

By application, the Kentucky grandparent visitation statute requires consideration of the constitutional interests of others. In *Baker* v. *Perkins,* 774 S.W.2d 129 (Ky. App. 1989), the trial court denied grandparent visitation just because the custodial parent objected to it. Because parental objection to visitation must be present in every disputed case, otherwise the statute would not be invoked, the court held it was alone insufficient to deny visitation (774 S.W.2d pp. 129-130):

> "This reasoning effectively substitutes 'wishes of the custodial parent' for 'best interest of the child' as the standard by which to grant or deny visitation rights. Inasmuch as it does so it contravenes KRS 405.021. That statute gives grandparents the right to have a court determine whether visitation would be in the best interest of their grandchildren. As a part of this determination, the court should, of course, take into consideration the custodial parent's attitude, and the possibility of conflict. However, the evaluation cannot stop there. There are other considerations, including the nature of the relationship between the child and her grandmother, the preferences of the child, and the mental and physical health of the parties.
>
> [Footnote omitted.]
>
> "In other words, some risk/benefit analysis must be made. The circuit court needs to ascertain whether the child would benefit from visitation with her grandmother. Against this the court should weigh the possibility that the animosity between [the child's] mother and grandmother is so strong that visitation would affect [the child] adversely."

This definitive opinion of the statute is sound as a matter of state law. Such evaluation and balancing of interests

comports top, edge and bottom with this court's precedents, reviewed ante, as a matter of federal law.

In analyzing the due process issue from *Meyer* v. *Nebraska, supra,* the Kentucky Supreme Court found, in the present case (828 S.W.2d @ 632):

> "[I]t is not unreasonable for the state to say that the development of a loving relationship between family members is desirable and the arbitrariness of the statute is obviated by the requirement that visitation be granted by a court only after finding that it is in the best interest of the child."

Varying interests of the parents, the child, the state, and even the grandparent were weighed and a rational decision based thereon, as found appropriate in *Meyer* v. *Nebraska, supra,* and its progeny, as well as *Baker* v. *Perkins, supra.* That is completely within the holding in *Stanley* v. *Illinois, supra,* upon federal procedural and substantive due process.

Although founded in the police power or Tenth Amendment powers the state has substantial and recognized interests as society's representative in these family matters where laws are resisted as intrusive. Yet aside from those general and paternal powers the state has a private and essentially personal trust to perform in intrafamily disputes, especially where the Fourteenth Amendment liberty interests of parents and their children might diverge. The state protects children's rights as parens patriae as well as society's rights. *Stanley* v. *Illinois, supra,* p. 652; *Prince* v. *Massachusetts, supra,* pp. 165-166 (quoted ante); *Santosky* v. *Kramer, supra,* p. 766, and dissenting opinion.

The parens patriae interests of states logically would include those peculiar to and assertable by the child if sui generis or represented by a guardian ad litem. In this

regard such interests (whether identical, overlapping, or separate compared to those of parents or the state) may have these facets in cases arising under grandparent visitation laws:

First is the "legitimate state purpose of promoting and protecting the child's welfare," recognized in *Barry* v. *Barrale,* 598 S.W.2d 574, 581 (Mo. App. 1980), and following this court's precedents in *Stanley* v. *Illinois, supra,* p. 557, and *Prince* v. *Massachusetts, supra,* p. 165, among others; *In re J.L.L.,* 402 S.W.2d 629, 634 (Mo. App. 1966), expresses it in clear and vivid terms:

> "[T]he issue of the welfare of the child . . . is an issue always to be kept in view in all legal proceedings involving the . . . control of a minor child as to which the state stands in the relation of parens patriae. In other words, when a minor child is brought within the jurisdiction of a court . . ., the child becomes the ward of the court; and in determining the question of its ultimate disposition, the child's well-being is of paramount consideration, and the rights and claims of the contending parties, *even in the case of the parents themselves,* must be subordinated to what the court may conclude will be for the best interests of the child;"

Second, visitation promotes continuation of a relationship regarded as socially vital and worthy of promotion rather than destruction, at least for petty reasons, *King* v. *King, supra,* 828 S.W.2d @ 632; *Bryan* v. *Bryan,* 132 Ariz. 353, 356, 645 P.2d 1267, 1270 (Ct. App. 1982) (Visitation allows at least partial continuance of an earlier established close relationship); *Lehrer* v. *Davis,* 214 Conn. 232, 239, 571 A.2d 691, 695 (1990) (The "importance to children of stability and continuity in their close relationships is well recognized. Psychiatrists and psychologists . . . unanimously counsel that children should maintain and retain

meaningful relationships and that to deny them from continuing contacts is a deprivation. . .");

Third, grandparent visitation cements the existing kinship circle of a child's environment so vital to development and happiness, the feeling of belonging, of being included, and of being worthy in the eyes of others, of experimenting in conduct, diet, inquiry, or association without the pressure of condemnation or punishment, or the tension caused by the presence of parents but with the loving care and protection of one's own; *King* v. *King, supra,* (". . . a grandchild will ordinarily benefit from contact with the grandparent. That grandparents and grandchildren normally have a special bond cannot be denied."); *In re Tremayne Quame Idress R.,* 286 P.Sup. 480, 487, 429 A.2d 40, 44 (1981) ("Kinship ties are still very important in our society. A sense of closeness to relatives can be critical to a child's wholesome and happy development.");

Fourth, visitation helps the child learn his or her heritage, a sense of geographic and societal position, pride, accomplishment and involvement. A child has an interest "in maintaining a connection with his 'roots'." *In re LaRusso,* 9 Fam.L.Rep. (BNA) 2646, 2647 (NY Fam. Ct. 1983). Accord, *People ex rel. Simmons* v. *Sheridan,* 98 Misc. 328, 332, 414 N.Y.S. 2d 83, 85 (Fam. Ct. 1979), aff'd. sub nom. *People ex rel. Sibley* v. *Sheppard,* 79 A.D. 896, 435 N.Y.S.2d 871 (1980) and 54 N.Y.2d 320, 429 NE2d 1049, 445 N.Y.S.2d 420 (1981);

Fifth, visitation helps in protection of the child's interests when faced with abusive, cold, harsh, neglectful, distracted, demanding, or impaired parents, or a difficult or unsuitable home environment, school, or community, through a relationship based upon love and respect, but short of counselling, foster care, changing custody, or other

drastic remedies, and prior to an age when religious faith may be possible or meaningful;

Sixth, visitation protects the grandchild from the attitudes and efforts by vindictive parents who deny current contact with or knowledge of grandparents, thereby causing the grandchild to suffer irreplaceable loss based upon differences to which he usually is not a cause, party or intermediary. *King* v. *King, supra; In re LaRusso, supra; Barry* v. *Barrale, supra; Layton* v. *Foster,* 95 A.D.2d 77, 466 N.Y.S.2d 723 (1983), aff'd 61 N.Y.2d 747, 460 NE2d 1351, 472 N.Y.S.2d 916 (1984). It might be added that the child as hostage to the situation may receive but does not necessarily accept the existence or grounds of the gulf in relations as justification for denial of contact with an otherwise suitable grandparent, and with a spat such as this one the parents themselves may grow up and discard it.

CONCLUSION

Respondent borrows with envy this compelling summary of the New Jersey Supreme Court in *Mimkon* v. *Ford,* 66 N.J.L. 426, 437, 332 A.2d. 199, 204-205 (1975):

> "It is biological fact that grandparents are bound to their grandchildren by the unbreakable links of heredity. It is common human experience that the concern and interest grandparents take in the welfare of their grandchildren far exceeds anything explicable in purely biological terms. A very special relationship often arises and continues between grandparents and grandchildren. The tensions and conflicts which commonly mar relations between parents and children are often absent between those very same parents and their grandchildren. Visits with a grandparent are often a precious part of the child's experience and there are benefits which devolve upon the grandchild from

the relationship with his grandparents which he cannot derive from any other relationship. Neither the Legislature nor this Court is blind to human truths which grandparents and grandchildren have always known."

The petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

STATE/STATUTE CITATION	CONDITIONS PRECEDENT: NONE	DEATH	DIVORCE	OTHERS
Alabama Code § 30-3-4		X	X	
Alaska Stat. § 25.24.150(a)		X	X	
Arizona Rev. Stat. § 25-337.01A		X	X	
Arkansas Stat. § 9-13-103		X	X	
California Civ. Code § 4601			X	
Colorado Rev. State. § 19-1-117		X	X	
Connecticut Gen. Stat. § 46b-59	X			
Delaware Stat. T10 § 950 (7)	X[1]			
Florida Stat. § 752.01 (1)		X	X	Parent has abandonded the child
Georgia Code § 19-7-3		X	X	Proof of special circumstances showing visitation necessary to protect the child's best interest
Hawaii Rev. Stat. § 571-46 (7)			X	
Idaho Code § 32-1008				Substantial relationship
Illinois Stat. ch. 110.5 ¶ 11-7.1		X		
ch. 40 § 607(b)		X	X	
Indiana Code § 31-1-11.7-2		X	X	
Iowa Code § 598.35		X	X	Child in foster home
Kansas Stat. § 38.129			X	Substantial contact of GP/child
Kentucky Rev. Stat. § 405.021(a)	X			
Louisiana Rev. Stat. § 9:572(a)		X	X	
Maine Rev. Stat. T19 § 752(6)			X	
Maryland Fam. Code § 9-102(1)			X	
Massachusetts Gen. ch. 119 § 39D		X	X	
Michigan Comp. Laws § 722.27(b)		X	X	
Minnesota Stat. § 257.022		X	X	Child lived with GP 12 months or more
Mississippi Code § 93-16-3		X	X	GP supported child for 6 months or visited regularly including overnight for greater than 12 months
Missouri Stat. §452.402(3)		X	X	Visitation has been unreasonably denied for more than 90 days
Montana Code § 40-9-102	X			
Nebraska Rev. Stat. § 43-1802		X	X	
Neveda Rev. Stat. § 125A.340		X	X	Parental rights terminated
New Hampshire Rev. Stat. § 458.17 (VI)			X	
New Jersey Stat. § 9:2-7.1		X	X	
New Mexico Stat. § 40-9-1 & 2		X	X	Child lived with GP for 6 months or more
New York Dom. Rel. § 72 & 240		X	X	
North Carolina Stat. § 50-13.2 & 13.2A & 5013.5(j)		X	X	
North Dakota Cent. Code §14-09-05.1	X			
Ohio Rev. Code § 3109.11		X		
Oklahoma Stat. T10 § 5	X			
Oregon Rev. Stat. § 109.121	X			
Pennsylvania 23 Cons. Stat. §§ 5311, 5312 & 5313		X	X	Child lived with GP 12 months or more
Rhode Island Stat. §§ 15-5-24.1 & 24.2		X	X	GP repeatedly attempted visitation and was denied over a period of 12 months or more, no other means but court ordered with clear and convincing evidence that the parents' decision is unreasonable
South Carolina Code §20-7-420(33)	X			
South Dakota Code § 25-453		X	X	
Tennessee Code § 36-6-301	X			
Texas Fam. Code § 14.03(e)		X	X	Incarceration; substantial contact; incompetence; parental rights terminated with no adopdon; child lived with GP 6 months or more
Utah Code § 30-5-2		X	X	
Vermont Stat. T 15 §§ 1011(a) & 1012		X	X	Abandonment; mental or physical disability
Virginia Code § 20-107.2			X	
Wash. Rev. Code § 26.09.240	X			
West Virginia Code § 48-2-15b & 48-2B-1		X	X	
Wisconsin Stat. § 767.245	X[2]			
Wyoming Stat. § 20-2-113(c)		X	X	

[1] Although the Delaware statute has no condition precedent, it contains a subsection which prohibits the granting of grandparent visitation rights over the objection of the natural or adoptive parents who are cohabitating as husband and wife.

[2] Although the Wisconsin statute has no condition precedent, conditions have been imposed judicially, see Van Cleve v. Hemminger, 415 N.W. 2d 571 (1987).